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10/581,011	02/15/2007	Klaus Worgull	3702	6846

7590
Striker, Striker & Stenby
103 East Neck Road
Huntington, NY 11743

EXAMINER

DEXTER, CLARK F

ART UNIT	PAPER NUMBER
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3724

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02/23/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/581,011	Applicant(s) WORGULL, KLAUS	
	Examiner Clark F. Dexter	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed on November 12, 2009 has been entered.

Drawings

2. The drawings were received on November 12, 2009. These drawings are acceptable.

Specification

3. The amendment to the specification on page 3 of the subject response has not been entered because no location has been specified for the replacement paragraph.
4. The disclosure stands objected to because of the following informalities:

The replacement paragraph for the paragraph beginning on page 6, line 21 of the present specification (found on page 3 of the amendment filed on January 2, 2009) is objected to for the following reasons:

In line 1, "on" should read --of--; in each of lines 4, 5 and 9, "means of" should be deleted for clarity; in line 6, "receptacles 40, 41" is inaccurate and should read --receptacles 44, 45--; in line 10, "sliding face" should be changed to read --sliding face 49, represented by the dotted features, --.

Appropriate correction is required.

Claim Rejections - 35 USC § 112, 1st paragraph

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-4 and 7-12 stand rejected under 35 U.S.C. 112, first paragraph, as

a. failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention, and/or

b. as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

It is respectfully submitted that the specifics of the adjusting structure are not sufficiently clear, and thus it is not clear how the device operates to adjust the cutting structure; for example, it is not clear how the lever 33, the spring 37 and the surrounding structure operate to provide the disclosed adjusting operation.

Further, the original disclosure does not appear to provide support for a cutting blade being driven "without contact-pressure force" as now set forth in claim 12. That is, it is not clear how the cutting blade can be moved without contact-pressure force, particularly a lateral contact-pressure force at the point(s) where the blade 5 is connected to the drive structure.

Claim Rejections - 35 USC § 112, 2nd paragraph

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-4 and 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 11, the recitation "for receiving" renders the claim vague and indefinite as to whether the blade is received in the guide, and it is suggested to change "for receiving" to --that receives--; in line 13, the recitation "a cutting serration" is vague and indefinite as to what disclosed structure it refers, particularly in view of the previous recitation of "cutting teeth" in line 8.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4 and 7-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Oster, pn 2,253,195.

Oster discloses a device with almost every structural limitation of the claimed invention including:

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one lower shearing blade (e.g., one occurrence of 11) and one upper shearing blade (e.g., another occurrence of 11) fixedly joined to one another (e.g., via the assembly structure), wherein each of said lower shearing blade and said upper shearing blade includes a shearing serration (e.g., 13, 13);

a slit disposed between said lower shearing blade and said upper shearing blade (e.g., the space between blades 11, 11 which is occupied by blade 9);

a cutting blade (e.g., 9) comprising cutting teeth (e.g., 12) and made from a flat material (e.g., see Fig. 3) and configured to drive in oscillation, wherein the slit is configured to form a guide for receiving the cutting blade, wherein the cutting blade is configured to oscillate between the lower and upper shearing blades, wherein the cutting blade has a cutting serration on one end that corresponds to said shearing serrations on said lower shearing blade and said upper shearing blade;

[claim 4] wherein the cutting blade is provided with a parallel guide (e.g., e.g. 14);

[claim 8] wherein the hair cutting machine (which is an intended use and is not part of the claimed invention) is operated with a battery or with a rechargeable battery (16);

[claim 9] wherein the cutting head is in the form of a structural unit;

[claim 10] wherein the cutting head is lockable to the hair cutting machine;

[claim 11] wherein the cutting blade is configured to be driven to oscillate by a drive motor via a slaving device (e.g., the cutting blade has a substantially flat configuration and is thus considered to be configured as claimed);

[claim 12] wherein the cutting blade (5) is driven without contact-pressure force (e.g., this recitation, as best understood, is met in substantially the same manner as for the present invention).

Oster lacks:

a hair length cut adjuster configured such that the lower and the upper shearing blades can be adjusted relative to the cutting blade.

However, the Examiner takes Official notice that hair cutting length adjusters of various sorts are old and well known in the art and provide various well known benefits including facilitating various types of shaving to provide for a desired shaving experience and/or to achieve a desired appearance. Further, such adjustment mechanisms provide other well known benefits including facilitating blade positioning/alignment to provide the desired cutting action and cutting relationship between the blades. Such adjustments are often made to accommodate replacement and/or worn blades. Therefore, it would have been obvious to one having ordinary skill in the art to provide a such a cutting length adjuster or more generally stated, a blade adjustment mechanism on the device of Oster to gain the well known benefits including those described above.

Further, Oster discloses a device with almost every structural limitation of the claimed invention but lacks:

- an explicit disclosure of hard sheet metal as set forth in claim 2;
- an explicit disclosure of the blade thickness as set forth in claim 3;
- a lubricant reservoir as set forth in claim 7.

Regarding claim 2, the Examiner takes Official notice it is old and well known in the art to make shaving components from hard metal sheet to gain the well known benefits including sturdiness and durability. Therefore, it would have been obvious to one having ordinary skill in the art to make components of the device of Oster from hard metal sheet to gain the well known benefits including those described above.

Regarding claim 3, it is noted that there are no relative dimensions given, and to make the device of Oster any size (i.e., to any scale) is well within the skill level of one having ordinary skill in the art.

Regarding claim 7, the Examiner takes Official notice that lubricant reservoirs in shaving devices are old and well known in the art and provide various well known benefits including treating the skin during shaving for various reasons including to enhance shaving comfort. Bott, pn 2,194,465 discloses just one example of a lubricant reservoir on a shaving device. Therefore, it would have been obvious to one having ordinary skill in the art to provide a lubricant reservoir on the device of Oster to gain the well known benefits including those described above.

It is noted that the common knowledge or well-known in the art statement of the previous office action has been taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. See MPEP § 2144.03.

Response to Arguments

6. Applicant's arguments filed November 12, 2009 have been fully considered but they are not persuasive.

In the paragraph bridging pages 7-8 of the subject response, applicant argues that the hair cutting length adjuster (9) is sufficiently disclosed and further that the principle thereof is known from European Publication EP 0856386. However, the Examiner respectfully disagrees. Regarding the present disclosure, the Examiner acknowledges that while components of the cutting length adjuster are described, the disclosure does not sufficiently explain how these components cooperate with one another to perform the disclosed adjusting function. Further, EP 0856386 cannot be relied upon to support the claimed invention because it does not meet the requirements of incorporation by reference and because it is a German document without an English translation.

In the second paragraph on page 8 of the subject response, it is respectfully submitted that the recitation "contact-pressure force" remains unclear with respect to the present disclosure. Applicant's explanation is acknowledged, but it is respectfully submitted that support for this explanation could not be found in the present disclosure. Further, the term "contact-pressure force" is broad, and clearly there must be at least some contact-pressure force applied to the cutting blade (e.g., by slaving device 12) to move the cutting blade. Further, there must be at least some contact-pressure force as the cutting blade 5 moves over the shearing blades 2, 3.

In the paragraph bridging pages 9-10 of the subject response, applicant argues that:

“As argued previously, Oster does not teach or suggest a cutting head in which the stationary shearing blades are fixedly connected to one another to form a guide (in the form of a slot) that receives the cutting blade (5).”

The Examiner respectfully disagrees with applicant's position. Oster clearly discloses stationary shearing blades 11, 11 that are fixedly connected to one another by structure including clip 16 as well as the other structure disclosed and shown (e.g., see Figs. 1, 3 and 4). In other words, in the assembled device, the stationary shearing blades are clearly connected to one another and are clearly fixed in position relative to each other. There is nothing in the claims that requires the specific connection configuration of the present invention, such as the specific structure shown in Fig. 9.

In the second paragraph on page 10 of the subject response, applicant argues that:

“Oster does not, however, teach or suggest a cutting head in which two shearing blades are fixedly connected to one another to form a guide for receiving a cutting blade, that is, inserting the cutting blade once the shearing blades are solidly fixed to one another.”

The Examiner respectfully disagrees with applicant's position. Oster clearly teaches two shearing blades that are fixedly connected to one another (as explained above) and Oster clearly teaches that the two shearing blades form a guide for receiving the cutting blade. For example, as shown in Figs. 1 and 4, the two fixed shearing blades 11, 11 clearly act as a guide for the reciprocating cutting blade 9.

In the third paragraph on page 10 of the subject response, applicant argues that:

“Further, Oster does not disclose or suggest that said cutting blade (5) has a cutting serration on one end that corresponds to said shearing serrations on said lower shearing blade and said upper shearing blade, as defined in amended claim 1.”

The Examiner respectfully disagrees with applicant's position. First, it is clear that Oster has a cutting serration 12 on one end of the blade 9. Second, the cutting serration 12 clearly corresponds to the shearing serrations 13, 13 on the fixed shearing blades 11, 11 in at least some way, shape or form. For example, they “correspond” in that they are in the same area of the cutting assembly, they are configured to cooperate with one another, they all have a cantilevered tooth configuration, etc. In other words, the recitation “corresponds” is very broad and is not sufficient to distinguish the claimed invention over the prior art.

For at least the above reasons, it is respectfully submitted that the rejections must be maintained.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (571)272-4505. The examiner can normally be reached on Mondays, Tuesdays, Thursdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571)272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Clark F. Dexter/
Primary Examiner, Art Unit 3724**

cfd
February 19, 2010